

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1626 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TRIMITRA CO.OP.HOU.SOC.

Versus

STATE OF GUJARAT

Appearance:

MR VS PARIKH for Petitioners

MR KC SHAH for Respondents No. 1 and 2

None present for Respondents No. 3 and 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/03/97

ORAL JUDGEMENT

1. The petitioners filed this Special Civil Application and challenge has been made to the order dated 6th March, 1984 of the respondent No.2 passed under sec.34 of the Urban Land (Ceiling and Regulation) Act, 1976, whereunder the permission granted by the Additional Collector and Competent Authority, Ahmedabad under sec.26 of the aforesaid Act, in respect of the land bearing sub-plot No.5 of Final plot No.219 of Town Planning

Scheme No.19 situated at Sheikhpur Khanpur, Taluka City, District and Sub-District of Ahmedabad admeasuring 861 sq. yds.. was cancelled. The prayers have also been made for quashing of the other orders and the show-cause notice as mentioned in para No.12(a).

2. The respondent No.2 under the impugned order held that Smt. Rukshmaniben Mehta on 17th February, 1976 was holding 1441 sq. yards of land, that is equal to 1204.85 sq. mts, and as such, she was not entitled to give notice under sec.26 to sell 719.90 sq. mts. of open land to the petitioners herein. Consequently, the order of the Competent Authority dated 5-10-1981 was cancelled.

4. The learned counsel for the petitioners raised one of the contentions that in view of the decision of the Supreme Court in the case of Meera Gupta vs. State of W.B. reported in AIR 1992 SC 1567, the bungalow of husband of respondent No.4 admeasuring 580 sq. yds. which was earlier constructed prior to the order dated 17th February, 1976, could not have been clubbed with the land in dispute. That bungalow was in the name of the husband of respondent No.4 of Gadhvi Co-operative Housing Society Ltd. The counsel for the respondents No.1 and 2 does not dispute this legal position, but he contends that in the light of this judgment further points are to be considered by the authority which were not considered at that time. This decision has come later in point of time after the order impugned in this Special Civil Application has been made.

4. I have given my thoughtful consideration to the submission made by the learned counsel for the parties. The decision of the Supreme Court is later in point of time then the order impugned in this Special Civil Application has been made by the respondent No.1, and as such, I consider it to be appropriate to remand this matter to the said authority to decide the matter afresh on merits after taking into consideration the decision of the Supreme Court in the case of Meera Gupta vs. State of W.B. (supra). However, it shall be open to both the parties to make all other submissions available to them in the matter.

5. In the result, this Special Civil Application succeeds and the order annexure 'E' dated 6th March, 1984 of the respondent No.2 is quashed and set aside and the matter is sent back to the said authority for deciding the matter afresh after considering the decision of the Supreme Court relied by the counsel for the petitioner, and other points, if any, raise by the parties. Rule

made absolute in the aforesaid terms. No costs.

zgs/-